

SENATE BILL 881

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2004 Regular Session
4r3089

By: **Senator Astle**

Introduced and read first time: February 25, 2004

Assigned to: Rules

Re-referred to: Finance, February 27, 2004

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Committee Report: Favorable

Senate action: Adopted

Read second time: April 3, 2004

CHAPTER _____

1 AN ACT concerning

2 **State's Right of Recovery - Grant Programs - Exemption for Lease of**
3 **Federal Land**

4 FOR the purpose of exempting real property leased from the federal government from
5 the State's right to recover, under certain circumstances, certain funds
6 disbursed to certain community mental health, addiction, and developmental
7 disabilities facilities grant programs; exempting real property leased from the
8 federal government from the State's right, under certain circumstances, to
9 create a lien against real property for certain community mental health,
10 addiction, and developmental disabilities facilities grant programs; making
11 conforming changes; and generally relating to exempting property leased from
12 the federal government from the State's right to recover funds disbursed to
13 grant programs or to create a lien against the property.

14 BY repealing and reenacting, with amendments,
15 Article - Health - General
16 Section 24-606
17 Annotated Code of Maryland
18 (2000 Replacement Volume and 2003 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Health - General**

2 24-606.

3 (a) In accordance with this section, the State:

4 (1) [shall] SHALL have the right to recover funds disbursed under this
5 subtitle; AND

6 (2) MAY NOT:

7 (I) RECOVER FUNDS DISBURSED UNDER THIS SUBTITLE FROM
8 THE FEDERAL GOVERNMENT IF THE FEDERAL GOVERNMENT IS THE LESSOR OF
9 REAL PROPERTY ON WHICH A PROJECT IS CONSTRUCTED OR A FACILITY IS
10 OPERATED; OR11 (II) CREATE A LIEN AGAINST REAL PROPERTY THAT IS LEASED
12 FROM THE FEDERAL GOVERNMENT ON WHICH A PROJECT IS CONSTRUCTED OR A
13 FACILITY IS OPERATED.14 (b) [In] SUBJECT TO SUBSECTION (A)(2) OF THIS SECTION, IN the event of
15 failure to complete a project or failure to commence operation of a facility, the State
16 may recover from the recipient of the funds disbursed for the project or facility or the
17 owner of the property an amount equal to the amount of State funds disbursed for the
18 project, together with all costs and reasonable attorneys' fees incurred by the State in
19 the recovery proceedings.20 (c) [If,] SUBJECT TO SUBSECTION (A)(2) OF THIS SECTION, IF, within 30 years
21 after completion of a project, a community mental health facility, addiction facility, or
22 developmental disabilities facility with respect to which funds have been paid under
23 this subtitle is sold or transferred to any person, agency, or organization that would
24 not qualify as an applicant under this subtitle, or that is not approved as a transferee
25 by the Board of Public Works, or if, within the same period, a community mental
26 health facility, addiction facility, or developmental disabilities facility ceases to be a
27 "facility" as defined in this subtitle, then the State may recover from either the
28 transferor or transferee or, in the case of a community mental health facility,
29 addiction facility, or developmental disabilities facility that has ceased to be a
30 "facility" as defined in this subtitle, from the owner, an amount bearing the same
31 ratio to the then current fair market value of so much of the property as constituted
32 an approved project as the amount of the State participation bore to the total eligible
33 cost of the approved project, together with all costs and reasonable attorneys' fees
34 incurred by the State in the recovery proceedings.35 (d) (1) The Department shall cause notice of the State's right of recovery to
36 be recorded in the land records of the county or Baltimore City in which the property
37 is located before the State makes any funds available for the approved project.38 (2) The recording of the notice shall not create any lien against the
39 property; however, SUBJECT TO SUBSECTION (A)(2) OF THIS SECTION, it shall

1 constitute notice to any potential transferee, potential creditor, or other interested
2 party of the possibility that the State may obtain a lien under this subtitle.

3 (e) (1) In the event of a failure to complete the project or commence
4 operations of the facility as described in subsection (b) of this section, or in the event
5 of an alleged sale or transfer as described in subsection (c) of this section, or in the
6 event that a property is alleged to have ceased to be a "facility" as defined in this
7 subtitle, the Secretary of the Board of Public Works may authorize the Department to
8 file, in the circuit court of the county or Baltimore City in which the property is
9 located, a claim under this subtitle (styled as a civil action against the owner of the
10 property and any other interested parties, including any transferor that the State
11 wishes to make a party), together with a sworn affidavit stating facts on which the
12 allegations of default are based, as well as a detailed justification of the amount
13 claimed.

14 (2) If the circuit court determines from the State's initial filing that
15 there is probable cause to believe that a default has occurred, the court shall
16 authorize a temporary lien on the property, in the amount of the State's claim, plus
17 any additional amount estimated to be necessary to cover the costs and reasonable
18 attorney's fees incurred by the State, or other amounts as the court determines to be
19 reasonable, pending full determination of the State's claim.

20 (3) The temporary lien takes effect on the date of the court's
21 authorization if the State records a notice of temporary lien in the land records of the
22 county or Baltimore City in which the property is located within 10 days thereafter;
23 otherwise, the temporary lien takes effect on the date a notice of temporary lien is
24 recorded. While the temporary lien is in effect, neither the owner nor any person who
25 acquired an interest in the property after the State first made funds available in
26 connection with the property under this subtitle may take any action that would
27 affect the title to the property or institute any proceedings to enforce a security
28 interest or other similar rights in the property, without the prior written consent of
29 the State.

30 (4) The owner of the property or any other interested party may obtain
31 release of this temporary lien at any time by filing with the court a bond securing the
32 payment in full of the State's claim any additional amount necessary to cover the
33 costs and reasonable attorneys' fees incurred by the State. The owner or other
34 interested party may cause the release to be recorded in the land records.

35 (f) (1) Proceedings to determine the State's right to recover and the amount
36 of its recovery under this subtitle shall have priority over other civil proceedings in
37 the circuit courts.

38 (2) At the conclusion of full adversary proceedings on the issue of default
39 and on any disputes over the amount of the State's recovery, the circuit court shall, if
40 it finds that a default has occurred, issue a final judgment for the amount it finds to
41 be recoverable by the State. All parties involved in the default, including in every case
42 the owner of the property, shall be held jointly and severally liable to the State for the
43 amount of the judgment. This amount, if it remains unpaid after the expiration of 30

1 days following the court's final order, shall be a lien on the property, superior (except
2 as the State may by written subordination agreement provide otherwise) to the lien or
3 other interest of any mortgagee, pledgee, purchaser, or judgment creditor whose
4 interest became perfected against third persons after the State first made funds
5 available in connection with the property under this subtitle.

6 (3) This lien takes effect on the 31st day following the court's final order
7 if the State records a notice of lien in the land records of the county or Baltimore City
8 in which the property is located on or before the 41st day following the final order;
9 otherwise, the lien takes effect on the date a notice of lien is recorded. At the time this
10 lien takes effect, any temporary lien then in effect shall be automatically and fully
11 released, and the recorded notice of this lien shall constitute notice of the release of
12 the temporary lien.

13 (4) This lien may be enforced and foreclosed in accordance with the
14 procedures prescribed in the Maryland Rules, except that neither the State nor any
15 agent appointed by the State to sell the property need file a bond.

16 (5) The owner or any other interested party may obtain release of this
17 lien at any time by paying the State the full amount of the judgment rendered by the
18 circuit court, together with interest from the date of judgment. On payment in full,
19 the State shall cause a release to be recorded in the land records.

20 (6) If the circuit court finds that there has been no default or if the full
21 amount of the court's judgment is paid to the State within 30 days after the court's
22 final order, any temporary lien then in effect shall be released immediately and the
23 State shall cause a release to be recorded in the land records.

24 (g) (1) All funds recovered as a result of the State's right of recovery shall be
25 deposited in the Annuity Bond Fund and applied to the debt service requirements of
26 the State.

27 (2) The Board of Public Works may waive the State's right of recovery if
28 the Board determines that there is good cause for releasing the transferor, transferee,
29 or owner from this obligation.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2004.